THE HONORABLE JAMES P. DONOHUE

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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
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07-CV-00797-PRO

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ZANGO, INC., Plaintiff, v. PC TOOLS PTY, LTD., Defendant.	No. CV-07-0797 JPD **TEMPORARY RESTRAINING ORDER [PROPOSED]**

This CAUSE came before the Court on May 25, 2007 on Plaintiff Zango's Motion for Temporary Restraining Order.

The Court did/ did not hear oral argument from Plaintiff's counsel. Defendants were provided with notice of Plaintiff's Motion for Temporary Restraining Order and Defendants did / did not make an appearance. The Court considered the following:

1. Plaintiff's Motion for Temporary Restraining Order;
2. Declaration of Kelly Corr;
3. Declaration of Richard Purcell;
4. Declaration of Gregg Berretta; and

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5. The other pleadings and filings in this matter.

Based on the argument of counsel and the evidence presented, the Court makes the following findings of fact and conclusions of law, pursuant to Fed. R. Civ. P. 65:

1. Plaintiff Zango, Inc. ("Zango") is an online media company based in Bellevue, Washington that provides consumers access to a catalog of online videos, games, music, tools and utilities. Zango offers its catalog to consumers free of charge in exchange for an agreement to view advertising, and also offers a premium version of its content that gives consumers access without advertising.

2. Defendant PC Tools Pty Ltd. ("PC Tools") is in the business of developing and marketing various computer protection and security software program, including a program called "Spyware Doctor." Once Spyware Doctor version 184 is installed on a user's computer, it automatically disables Zango's software products without providing any opportunity for Zango customers to consent or intervene. Spyware Doctor also labels Zango software as an "elevated risk" and as "malicious." In addition, Spyware Doctor 184 prevents consumers who do not already have Zango software installed on their computer from downloading Zango applications, without providing any opportunity to consent or intervene.

3. Zango has suffered significant damage to its customer base, reputation and business model as a result of the actions taken by PC Tools through its manufacture and distribution of Spyware Doctor. This damage is ongoing so long as PC Tools maintains identifiers for Zango's applications within the Spyware Doctor detection database.

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4. In determining whether to issue a temporary restraining order, this Court considers: (1) the likelihood of success on the merits, (2) the possibility that the plaintiff will suffer irreparable injury without injunctive relief, (3) the extent to which the "balance of hardships" favors the plaintiff, and (4) whether injunctive relief would advance the public interest (in certain cases). *Los Angeles Mem'l Coliseum Comm'n v. Nat'l Football League*, 634 F.2d 1197, 1200 (9th Cir. 1980); *Del Toro-Chacon v. Chertoff*, 431 F. Supp. 2d 1135, 1140 (W.D. Wash. 2006). *See also Citizens Alliance to Protect our Wetlands v. Wynn*, 908 F. Supp. 825, 829 (W.D. Wash. 1995) (the standard for preliminary injunctions also applies to temporary restraining orders). The movant may satisfy its burden "by demonstrating either (1) a combination of probable success on the merits and the possibility of irreparable injury or (2) that serious questions are raised and the balance of hardships tips sharply in its favor." *Los Angeles Mem'l Coliseum*, 634 F.2d at 1201.

5. It is probable that Plaintiff will succeed on the merits. The tort of intentional interference with contractual relations or business expectancy prohibits one from purposefully interfering with a valid contractual relationship or business expectancy, where such interference is done for an improper purpose and results in damage. It is also likely that Plaintiff will succeed on the remaining claims for trade libel, violation of the Washington Consumer Protection Act, and unjust enrichment.

6. Defendants' actions have caused irreparable harm to Plaintiff's customer base, reputation and goodwill. The invasion of Plaintiff's rights is current and ongoing and will

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continue to cause actual and substantial injury to Plaintiff, absent the issuance of an order enjoining Defendants.

7. The irreparable harm suffered by Plaintiff outweighs any potential harm Defendants may suffer from the issuance of this Order.

For the reasons set forth in the above findings of fact and conclusions of law, it is hereby ORDERED:

1. Plaintiff Zango's Motion for Temporary Restraining Order is GRANTED.

2. Within ______ hours of the issuance of this Order, Defendant PC Tools shall eliminate all references to Zango's products, ClassIDs, code, files, fingerprints, and/or all other distinguishing characteristics from all products, definition files, and scanning databases sold, marketed, distributed or otherwise made available by PC Tools, and provide all existing PC Tools customers, partners, or others utilizing PC Tools' definition files with an updated set of files consistent with the foregoing.

3. This order is binding upon the parties to this action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

4. This order is effective immediately upon issuance provided Zango gives security in the amount of $________ for the payment of costs and damages which may be incurred by any party to be wrongfully restrained by this order, as provided by CR 65(c). Said bond must be posted by 4:30 p.m. on May ____, 2007, or this injunction is void.

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5. This temporary restraining order shall expire at midnight of the 10th day after issuance unless extended or vacated by court order or stipulation of the parties.

DATE AND HOUR OF ISSUANCE: May ____, 2007 at ________ a.m/p.m.

____
THE HONORABLE JAMES P. DONOHUE
UNITED STATES MAGISTRATE JUDGE

Presented by:

CORR CRONIN MICHELSON
BAUMGARDNER & PREECE LLP

By: ______________________________
Kelly P. Corr, WSBA #00555
Steven W. Fogg, WSBA #23528
Attorneys for Plaintiff
Zango, Inc.

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CERTIFICATE OF SERVICE

The undersigned declares as follows:

I am employed at Corr Cronin Michelson Baumgardner & Preece LLP, attorneys of record for Plaintiff Zango, Inc. herein.

I hereby certify that on May 25, 2007, I electronically filed the attached foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following persons:

J. Ronald Sim
Maren R. Norton
Stoel Rives LLP
600 University Street, Suite 3600
Seattle, WA 98101-3197

and I hereby certify that I have delivered via U.S. Mail the document to the following non CM/ECF participants:

N/A

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 25 day of May, 2007, at Seattle, Washington.

Joyce Abraham

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